

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 409 Alien Insurers

SPONSOR(S): Hooper

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Cooper	Cooper
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities authorized under the Florida Insurance Code. Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, administrative supervision, and licensure of viatical settlement and premium finance companies, as provided in the Florida Insurance Code or ch. 636, F.S. The Florida Insurance Code contains provisions designed to prevent insurers from becoming insolvent and to protect policyholders. These provisions include minimum capital and surplus requirements and financial reporting requirements. Florida law requires that insurers and other risk-bearing entities obtain a certificate of authority (COA) prior to engaging in insurance transactions unless specifically exempted.

Current law provides an exemption from the requirement to obtain a COA for any insurer domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. A "nonresident" is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and which (s)he intends to maintain as her or his permanent home.

The law further specifies that the insurer or any affiliated person under common ownership or control with the insurer may not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to any U.S. resident. For purposes of this exemption, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;
- Registered to vote in any state;
- Made a statement of domicile in any state; or,
- Filed for homestead tax exemption on property in any state.

To also be eligible for the exemption, the insurer must register with the OIR and provide certain relevant information to the OIR on an annual basis. The law further requires that the exempt insurer include a disclosure on all certificates issued in Florida reflecting that the policy has not been approved by the OIR.

The bill makes three primary changes to existing law. First, it deletes the reference to affiliated persons from the restriction on insurers soliciting or selling policies, or accepting applications. Thus, an insurer who has an affiliate will not be disqualified from obtaining an exemption. Second, the bill eliminates the prohibition on renewing policies to residents thereby allowing someone who was originally a nonresident at the time of issuance who subsequently becomes a resident to be insured under a non-regulated policy. Third, the bill modifies the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States.

The bill does not have a fiscal impact on state or local government. It may have a positive, yet indeterminate, fiscal impact on the private sector.

The bill provides for an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Office of Insurance Regulation (OIR) is responsible for all activities concerning insurers and other risk bearing entities authorized under the Florida Insurance Code.¹ Regulatory oversight includes licensure, approval of rates and policy forms, market conduct and financial exams, solvency oversight, administrative supervision, and licensure of viatical settlement and premium finance companies, as provided in the Florida Insurance Code or ch. 636, F.S.² The OIR's Life and Health Financial Oversight unit monitors financial conditions through the use of internal financial analysis and on-site examinations.³ Periodic financial report submission is part of the monitoring process. The Florida Insurance Code contains provisions designed to prevent insurers from becoming insolvent and to protect policyholders. These provisions include minimum capital and surplus requirements⁴ and financial reporting requirements.⁵ Florida law requires that insurers and other risk-bearing entities obtain a certificate of authority (COA) prior to engaging in insurance transactions^{6, 7} unless specifically exempted.⁸

Current law provides an exemption from the requirement to obtain a COA for any insurer domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S.⁹ A "nonresident" is defined as a person who resides in and maintains a physical place of domicile in a country other than the U.S., and which (s)he intends to maintain as her or his permanent home.

The bill requires that the exempt insurer include a disclosure on all certificates issued in Florida reflecting that the policy has not been approved by the OIR. The insurer or any affiliated person under common ownership or control with the insurer may not solicit, sell, or accept application for any insurance policy or contract for issue or delivery to any U.S. resident. For purposes of this subsection of statute, a U.S. resident is a person who has:

- Had her or his principal place of domicile in the United States for 180 days or more in the 365 days prior to issuance or renewal of the policy;
- Registered to vote in any state;
- Made a statement of domicile in any state; or,
- Filed for homestead tax exemption on property in any state.

Other exemption eligibility provisions require the insurer to:

- Register with the OIR.
- Provide the following information to the OIR on annual basis:
 - Names of the owners, officers and directors and number of employees.
 - Lines of insurance and types of products offered.
 - A statement from the applicable regulatory body of the insurer's domicile certifying that the insurer is licensed or registered in that domicile.
 - A copy of filings required by the insurer's domicile.

The bill makes three primary changes to existing law. First, it deletes the reference to affiliated persons from the restriction on insurers soliciting or selling policies, or accepting applications. Thus, an insurer who has an affiliate will not be disqualified from obtaining an exemption. Second, the bill eliminates the

¹ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code".

² s. 20.121(3)(a)2., F.S.

³ http://www.floir.com/lh/oir_LHFO_index.aspx

⁴ s. 624.4095, F.S.

⁵ s. 624.424, F.S.

⁶ s. 624.10, F.S.

⁷ s. 624.401, F.S.

⁸ s. 624.402, F.S.

⁹ s. 624.402(8), F.S.

prohibition on renewing policies to residents thereby allowing someone, who was originally a nonresident at the time of issuance who subsequently becomes a resident, to be insured under a non-regulated policy. Third, the bill modifies the definition of nonresident to include a trust or other entity organized and domiciled under the laws of a country other than the United States.

B. SECTION DIRECTORY:

Section 1: Amends s. 624.402(8)(a), F.S., relating to exceptions, certificate of authority required.

Section 2: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Expanding the current exemption from the COA requirement for insurers domiciled outside of the U.S. and covering only persons who, at the time of issuance or renewal, are nonresidents of the U.S. may further allow for a variety of insurance offerings. Nonresidents, in their domicile outside the U.S., may be able to purchase more health, life, property and casualty, supplemental, and other types of insurance coverage for the time they are in Florida, and for their property in the state. More nonresidents may also visit Florida to avail themselves of services covered under the policy or contract. Hence, revenue from tourism may increase.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

In its Bill Analysis for HB 409, OIR stated:

At subsection (8)(a), the legislation deletes the phrase “or renewal” – thus potentially expanding the number of companies exempt from the requirement to obtain a Certificate of Authority – and could allow current residents of Florida to have policies with companies that do not have a certificate of authority if the person became a resident after the policy was issued. The Office recommends keeping the “or renewal” language in the statute.¹⁰

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹⁰ OIR Bill Analysis – HB 409, November 28, 2011, on file with the Insurance & Banking Subcommittee.